

IN THE MATTER OF LICENSE NO. 382752  
MERCHANT MARINER'S DOCUMENT NO.Z-920-6170-D1  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Joseph Roy Richard

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1912

Joseph Roy Richard

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 July 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Third Assistant Engineer on board the SS U.S. PILOT under authority of the document and license above captioned, on or about 31 July 1969, while the vessel was at Stockton, California, Appellant did wrongfully create a disturbance in the vessel's saloon mess by directing abusive language towards a fellow crewmember and physically grabbing and manhandling said crewmember.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence testimony of the victim, the master, and two other eyewitnesses.

In defense, Appellant offered no evidence.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and the above specification had been proved. However, he reserved decision on another specification. He subsequently found this latter specification unproven and served a written order on Appellant suspending all documents issued to him for a period of three months on six months' probation.

The entire decision was served on 28 July 1971. Appeal brief was timely filed on 26 January 1972.

### FINDINGS OF FACT

On 31 July 1969, Appellant was serving as Third Assistant Engineer on board the SS U.S. PILOT and acting under authority of his license and document while the ship was in the port of Stockton, California.

On 31 July 1969, Appellant and another crewmember engaged in a series of arguments during which each directed profanity at the other. This culminated in Appellant taking the other crewmember by the shoulders and shaking him.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the master and the Coast Guard overreacted to what was essentially a shouting match;
- (2) the delay of two years between the hearing date and the decision is grossly unfair to the Appellant.

APPEARANCE: Jennings, Gartland & Tilly, San Francisco, California.

### OPINION

Because of the disposition of the second ground for appeal, it is not necessary to reach the first contention.

The hearing in this case was held on 1 August 1969, the day following that upon which the wrongful conduct occurred. However, the decision of the Administrative Law Judge was not rendered until 22 July 1971. There was, thus, a delay of just short of two years between the hearing and the decision.

It is to be noted that a delay of this magnitude does not per se constitute grounds for reversal. The facts of each case must be scrutinized in order to determine the reasons for the delay, the possible prejudice to the Appellant occasioned thereby, and the effect upon the remedial nature of the proceedings.

The instant case presented the Administrative Law Judge a far from complex situation. In fact, he was able to find the charge and one specification proved before the termination of the hearing. For some reason, he found it necessary to reserve decision on the other specifications, but there appears to have been no justification for a two year delay thereon. Not only was the Appellant forced to long anticipate the possible severity or

leniency of his forthcoming sanction, but the remedial purpose of the proceedings would seem to be no further served by the imposition of a six month probation period some three and one-half years after the occurrence of the wrongful conduct. For these reasons and on the facts of the instant case, the order of the Administrative Law Judge cannot stand.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 22 July 1971, is VACATED and the charge DISMISSED.

C.R. BENDER  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D.C., this 21st day of March 1973.

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